No. 45459-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

PROTECT THE PENINSULA'S FUTURE ("PPF") and WASHINGTON ENVIRONMENTAL COUNCIL ("WEC"),

Appellants,

v.

GROWTH MANAGEMENT HEARINGS BOARD, and CLALLAM COUNTY,

Respondents.

CLALLAM COUNTY'S RESPONSE BRIEF

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I. INTRODUCTION

Washington's Growth Management Act ("GMA") requires counties to protect the environment and encourage agricultural activities. Counties adopting critical areas regulations for agricultural land struggled to balance these often-competing requirements. Ultimately, regulations adopted by counties attempting to comply with the GMA often resulted in administrative and judicial challenges.

In 2007, the legislature addressed this statewide issue. It enacted a moratorium on new critical areas regulations for agricultural areas and asked the William D. Ruckelshaus Center to examine the GMA's competing agricultural and environmental goals, engage with stakeholders, and propose a solution. As a result of this process, the legislature amended the GMA in 2011. The amendments created the Voluntary Stewardship Program to provide an alternate way for counties to balance the GMA's competing agricultural and environmental goals.

The amendments also created safe harbors. When a county attempts to participate in the Voluntary Stewardship Program but does not succeed, that county may adopt the development regulations of one of four designated "safe harbor" counties. Clallam County is one of the four designated counties. A county that cannot complete the Voluntary

Stewardship Program can comply with the GMA by adopting Clallam County's critical areas regulations.

Protect the Peninsula's Future ("PPF") first challenged Clallam County's critical areas regulations in 2001. The Growth Management Hearings Board (the "Board") issued an order of invalidity, which was appealed, remanded, and partially revised. This case is a continuation of that litigation. Following the 2011 GMA amendments, PPF sought an order from the Board requiring Clallam County to amend its critical areas regulations as originally ordered by the Board in 2001.

In response, the County moved to rescind the outstanding order of invalidity and to dismiss PPF's petition. The County argues that under the plain meaning of the 2011 GMA amendments its critical areas regulations comply with the GMA. The Board agreed. It analyzed the plain meaning of the 2011 amendments and reasoned that if another county could achieve GMA compliance by adopting Clallam County's regulations, then Clallam County's regulations must already comply with the GMA, as amended in 2011. The Board rescinded its 2001 order of invalidity and dismissed PPF's petition challenging the County's regulations. PPF appealed and the superior court affirmed the Board's decision. PPF has appealed again, and this Court should also affirm the Board's decision.

II. STATEMENT OF THE ISSUE

Counties across the state struggled to appropriately balance competing agricultural and environmental GMA goals when adopting critical areas regulations. The legislature stepped in, put a moratorium on new critical areas regulations, and asked the Ruckelshaus Center to study the issue. The resultant amendments to the GMA created the Voluntary Stewardship Program and safe harbors. This legislation says if a county cannot complete the Voluntary Stewardship Program, then it can achieve GMA compliance by adopting the critical areas regulations of one of four designated safe harbor counties, including Clallam County. The issue in this case is whether the Board correctly interpreted and applied the law when it decided that if another county could comply with the GMA by adopting Clallam County's regulations, then under the plain meaning of the GMA amendments, Clallam County's regulations comply with the GMA.

III. STATEMENT OF THE CASE

A. The GMA contains competing environmental and agricultural goals.

The legislature enacted the GMA in 1990 to coordinate the state's future growth through comprehensive land use planning. RCW 36.70A.010. The GMA established a series of goals to guide county adoption of comprehensive plans and development regulations.

RCW 36.70A.020. One goal directs counties to "maintain and enhance natural resource-based industries, including...agricultur[e]." RCW 36.70A.020(8). Another goal directs counties to "protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water." RCW 36.70A.020(10). Before the 2011 GMA amendments created the Voluntary Stewardship Program, counties' only option for meeting these goals was designating and conserving agricultural lands and adopting development regulations to protect environmentally critical areas. RCW 36.70A.060.

In *Swinomish Indian v. Western Washington*, decided in 2007, the court discussed the GMA's competing environmental and agricultural goals:

> As we have already noted, one of the central requirements in the GMA is that counties and cities, which plan under it, must protect "critical areas." RCW 36.70A.060(2). But the GMA places additional, and sometimes competing, obligations on local governments...Local governments are not, however, given much direction by that statute as to whether protection of critical areas or the maintaining of agricultural lands is a priority. In fact, the GMA explicitly eschews establishing priorities.

161 Wn.2d 415, 424-25, 166 P.3d 1198 (2007). Navigating these competing goals becomes particularly tricky when counties must regulate land that qualifies both as agricultural land and as an environmentally critical area.

B. Prior to the 2011 amendments, counties struggled to balance the competing environmental and agricultural GMA goals.

A number of counties attempted to adopt critical areas regulations that balanced the GMA's agricultural and environmental goals. For example, in Skagit County, most of the prime agricultural lands abut the Skagit and Samish Rivers, which are also prime salmon habitats that qualify as critical areas. *Swinomish*, 161 Wn.2d at 425. When Skagit County's regulations were challenged, the reviewing court said Skagit County needed to change its approach and add a monitoring system. *Id.* at 436-37. Island County's regulations were similarly challenged, and that court reached a similar result. *Whidbey Envtl. Action Network v. Island Cnty.*, 122 Wn. App. 156, 183-84, 93 P.3d 885 (2004).

C. PPF challenged Clallam County's critical areas regulations.

Like Island County and Skagit County, Clallam County struggled to balance the GMA's agricultural and environmental goals in its critical areas regulations. The County adopted a critical areas ordinance in December 1999. CP 66. The critical areas ordinance was challenged by PPF in Case No. 00-2-0008. *Id.* The County subsequently revised its critical areas ordinance to achieve compliance, but this revision was also challenged in Case No. 01-2-0020. *Id.* The Board consolidated these two cases. *Id.*

In October 2001, the Board issued a compliance order that referenced six areas where Clallam County's critical areas ordinance interfered with GMA goals. CP 67. The County appealed this compliance order to superior court and then to the court of appeals, which remanded the case to the Board. *Id.* On remand, the Board issued an order in January 2006 stating that the parties had stipulated to compliance on the first three issues, the Board's original noncompliance decision had been reversed by the courts as to the next two issues, and thus, only the sixth issue remained before the Board. *Id.*

This sixth issue related to the County's critical areas exemption for agricultural land enrolled in the County's open space taxation program. CP 68. However, the Board said it would not set a compliance schedule for this sixth issue because the County had filed a petition for review with the Supreme Court. *Id.* Before the Supreme Court acted on the County's petition for review, the legislature adopted SSB 5248 in 2007, which suspended local jurisdictions' authority to amend or adopt critical areas regulations in agricultural areas. *Id.* The Supreme Court later denied the County's petition for review. *Clallam Cnty. v. Western Wash. Growth Mgmt. Hearings Bd.*, 163 Wn.2d 1053, 187 P.3d 771 (2008).

D. To address the challenge of balancing agricultural and environmental GMA goals, the legislature enacted a moratorium on new regulations and asked the Ruckelshaus Center to study the issue and suggest a legislative solution.

The legislature recognized the challenge counties faced to appropriately balance competing agricultural and environmental goals in the GMA. Laws of 2007, Ch. 353 (SSB 5248) § 1(1). ("The legislature recognizes that efforts to achieve a balance between the productive use of these resource lands and associated regulatory requirements have proven difficult.") To prevent further confusion and additional administrative and judicial challenges, the legislature enacted a temporary moratorium on new critical areas regulations affecting agricultural activities. *Id.* §. 2(1). The moratorium applied from May 1, 2007 until July 1, 2010. *Id.* This moratorium was subsequently extended for one year. Laws of 2010, Ch. 203 (SSB 6520).

During the moratorium, the legislature tasked the Ruckelshaus Center with examining "the conflicts between agricultural activities and critical areas ordinances adopted under chapter 36.70A RCW." Laws of 2007, Ch. 353 (SSB 5248), § 3(1). The Ruckelshaus Center was asked to consult with agricultural, environmental, tribal, and local government stakeholders. *Id.* § 3(2). These stakeholders were to focus on innovative solutions and "ways to modify statutory provisions to ensure that

regulatory constraints on agricultural activities are used as a last resort if desired outcomes are not achieved through voluntary programs or approaches." *Id.* § 3(3)(b)(ii).

With the ultimate goal of "resolving, harmonizing, and advancing commonly held environmental protection and agricultural viability goals," *Id.* § 1(2), the Ruckelshaus Center was required to issue a final report of findings and legislative recommendations to the governor and the appropriate committees of the house of representatives and the senate. *Id.* § 3(4). The deadline for the final report was extended for a year, and the legislature planned to adopt "changes or new approaches to protecting critical areas during the 2011 legislative session." Laws of 2010, Ch. 203 (SSB 6520), § 2(3)(b)(iii).

The Ruckelshaus Center carried out its legislative mandate and engaged stakeholders to study the issue from 2007 through 2010. The group proposed legislative amendments to the GMA to create the Voluntary Stewardship Program. In 2011, the legislature adopted these amendments in Engrossed Substitute House Bill 1886, codified at RCW 36.70A.700-904.

E. The legislation proposed by the Ruckelshaus Center created the Voluntary Stewardship Program.

Before the 2011 amendments to the GMA, a county's only option to achieve GMA compliance was to adopt critical areas regulations under RCW 36.70A.060. The Voluntary Stewardship Program gives counties an alternate method to comply with the GMA's requirement to protect critical areas that could be impacted by ongoing agricultural activities. RCW 36.70A.710(1); CP 69-70.

Rather than adopting critical areas regulations under RCW 36.70A.060, counties may opt in to the Voluntary Stewardship Program. RCW 36.70A.710(1). The statute sets forth in detail the requirements for developing and implementing the Voluntary Stewardship Program, which include: adoption of a work plan; designation of priority watersheds; evaluation of the biological diversity and consideration of the agricultural activities within those watersheds; development of strategies to achieve the goals for each watershed; and creation of a local watershed group willing and able to oversee a successful watershed program. *See* RCW 36.70A.700-904.

The legislation goes on to create options for counties that do not or cannot complete the requirements for gaining approval of or implementing the Voluntary Stewardship Program. RCW 36.70A.735. A county may fail

to complete the Voluntary Stewardship Program because its work plan is not approved, the work plan's goals and benchmarks have not been met, or the program does not receive adequate funding. RCW 36.70A.735(2). In this situation, one of the county's fallback options is to use a safe harbor identified by the amendments. Namely, it can adopt regulations previously adopted by a county with similar agricultural activities, geography, and geology. RCW 36.70A.735(1)(b). The alternative regulations must, "[b]e from ***Clallam***, Clark, King, or Whatcom counties...." *Id.* (emphasis added).

The statute does not require these four counties to first revise their regulations, nor does it set any other prerequisites to adoption of these regulations by another county. *Id.* Thus, a county similar to Clallam County could, at any time after failing to complete the Voluntary Stewardship Program, comply with the GMA by adopting Clallam County's critical areas regulations.

F. Given the plain meaning of the 2011 GMA amendments, the Board dismissed PPF's petition and rescinded the order of invalidity.

After legislative enactment of the Voluntary Stewardship Program and the end of the moratorium, PPF filed a motion to set a compliance date for Clallam County. CP 69. Clallam County responded with a motion

to rescind the earlier order of invalidity as to the sixth remaining issue, based on its designation as a safe harbor county. *Id.*

The Board reviewed the history of challenges to Clallam County's regulations, the 2011 GMA amendments, and the new Voluntary Stewardship Program. CP 66-68. The Board then granted Clallam County's motion to dismiss PPF's petition and rescinded its previously-entered order of invalidity. The Board explained its rationale as follows:

> Clearly, the legislature [in 2011] concluded the development regulations of those four counties [including Clallam County] were sufficiently protective of critical areas in areas used for agriculture...Furthermore, the Board observes the position advanced by PPF could potentially produce an absurd result.

CP 72.

PPF appealed the Board's decision to superior court. CP 1-15. After hearing oral argument, the superior court judge affirmed the Board's decision and dismissed PPF's declaratory judgment claims. CP 107-110. In reaching this decision, Judge Harper explained:

> [B]y adopting Clallam as one of the counties that could be used as a safe harbor, so to speak, they basically have said they're good enough. And so if somebody doesn't like that, I think they go back to the legislature and say Clallam is not good enough. Amend the statute and take Clallam out of it...I don't have the authority to do that...I can't interpret the [Voluntary Stewardship Program] statutes... and the GMA the way PPF wants me to given that Clallam is in that section...the big difference-maker here is Clallam

was specifically identified as a county that the legislature essentially said their regs are sufficient.

Verbatim Report of Proceedings dated August 14, 2013 at 35-36. PPF appealed the superior court's decision. CP 105.

IV. ARGUMENT

A. PPF bears the burden of proving that the Board erroneously interpreted or applied the law.

A party challenging the Board's decision bears the burden of proving it is invalid. RCW 34.05.570(1)(a). The Board's decision is invalid if it suffers from one of nine enumerated infirmities. RCW 34.05.570(3). In this case, it appears that PPF argues that the Board erroneously interpreted or applied the law when it decided to lift the order of invalidity and dismiss the case against Clallam County. PPF Opening Brief at 3. This basis of invalidity challenges the Board's legal conclusions. RCW 34.05.570(3)(d); *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998).

Appellate courts review the Board's decisions under the Administrative Procedures Act. *Swinomish*, 161 Wn.2d at 424 (citing RCW 34.05.570(3)). Its legal conclusions are reviewed de novo. *Stevens Cnty. v. Eastern Wash. Growth Mgmt. Hearings Bd.*, 163 Wn. App. 680, 688, 262 P.3d 507 (2011). Its findings of fact are reviewed for substantial evidence. *Id.* Substantial evidence is "a sufficient quantity of evidence to

persuade a fair-minded person of the truth and correctness of the order." *Id.* (citing *King Cnty. v. Cent. Puget Sound Hearings Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000)). Moreover, an appellate court affords deference to the Board because the court must "accord deference to an agency interpretation of the law where the agency has specialized expertise in dealing with such issues." *City of Redmond*, 163 Wn.2d at 46. Here, the Board is tasked with administering the GMA, and its members have expertise. RCW 36.70A.250 (Board members are "qualified by experience or training in matters pertaining to land use law or land use planning").

In this case, the Board decided that Clallam County's regulations comply with the GMA. CP 72-72. To grant relief from the Board's decision, the court would have to conclude that the Board has erroneously interpreted or applied the GMA in reaching this conclusion. RCW 34.05.570(3)(d).

B. The plain meaning of the 2011 GMA amendments establish Clallam County's GMA compliance.

1. The GMA amendments include Clallam County as one of four safe harbor counties.

The 2011 amendments to the GMA specifically list Clallam County as one of the four designated safe harbor counties in the Voluntary Stewardship Program. RCW 36.70A.735(1)(b). There is no question that

the current version of the GMA lists Clallam County as a safe harbor county. "The GMA was spawned by controversy, not consensus and, as a result, it is not to be liberally construed." *Thurston Cnty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 342, 190 P.3d 38 (2008). In this context, it is appropriate to assume that the legislature "means exactly what it says." *State v. Delgado*, 148 Wn.2d 723, 727-28, 63 P.3d 792 (2003).

The language in the 2011 GMA amendments is unambiguous and should not be liberally construed—it says a similarly situated county could comply with the GMA by adopting Clallam County's regulations. There is only one possible interpretation: the legislature has determined that Clallam County's critical areas regulations comply with the GMA. "If the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). The plain meaning of the GMA amendments establish Clallam County's compliance with the GMA.

2. Because the meaning of the GMA amendments is unambiguous, it is improper to consider extrinsic evidence.

Where a statute's meaning is plain and unambiguous, it is not appropriate to consider legislative history and extrinsic evidence. "If the

statute is clear and unambiguous, we may not look beyond the statute's plain language or consider the legislative history but should glean the legislative intent through the plain meaning of the statute's language." *Riofta v. State*, 134 Wn. App. 669, 680, 142 P.3d 193 (2006). If the plain meaning of a statute is unambiguous, then the court's inquiry is at its end. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010).

PPF asked the Board to speculate about the potential significance of a possible clerical error on the Board's website. PPF's Opening Brief at 38. The Board properly denied that request. CP 69. Screen shots of the Board's website are extrinsic evidence beyond the scope of the Court's inquiry. Even if the Court considers the status of Clallam County's review on the website, this "evidence" is not enough to establish that the legislature made a mistake or intended a different outcome. And even if this extrinsic evidence did allow the Court to reach that conclusion, the proper fix would be through the legislature. It is inappropriate for the Court to ignore the plain meaning of a statute based on speculation by the petitioner.

3. *PPF's proposed reading of the GMA improperly adds new language to the statute.*

PPF advocates for additional words to be read into the statute. PPF asks the Court to read the fallback provision of the Voluntary Stewardship Program as, "[Regulations must] be from Clallam, Clark, King, or Whatcom counties, so long as the development regulations have been updated and found in compliance with RCW 36.70A.060." This reading is improper because it (1) ignores a fundamental canon of construction, and (2) it creates an outcome that conflicts with the next section of RCW 36.70A.735(1)(b).

First, courts should not add words to a statute to arrive at its plain meaning. "We cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language." *State v. Delgado*, 148 Wn.2d at 727. The legislature did not require the four safe harbor counties to update their regulations before adoption by a similarly situated county. As discussed below, RCW 36.70A.710 only requires a county to revise its regulations by July 2013 ***if necessary***.

Second, PPF's suggested interpretation conflicts with the next section of RCW 36.70A.735(1)(b). The fallback provision says:

> Regulations adopted under this subsection (1)(b) must be from a region with similar agricultural activities, geography, and geology and must: (i) Be from Clallam, Clark, King, or Whatcom counties; ***or*** (ii) have been upheld

> by a growth management hearings board or court after July 1, 2011, where the board or court determined that the provisions adequately protected critical areas functions and values in areas used for agricultural activities.

RCW 36.70A.735(1)(b) (emphasis added). This section says that the development regulations must be from one of the four safe harbor counties ***or*** have been upheld by the Board after July 1, 2011. PPF essentially replaces "or" with "and" by arguing that the County must revise its regulations and then go back before the Board to lift the previous order of invalidity from 2001 before it could become a safe harbor county.[1] PPF Opening Brief at 28.

PPF's suggested interpretation is inconsistent with the plain meaning of RCW 36.70A.735(1)(b). The legislature put the four safe harbor counties in a different category than counties with regulations upheld by the Board after July 1, 2011. If the legislature meant to require Clallam County to revise its regulations after July 1, 2011 before it could become a safe harbor county, then the distinction between subsections (i) and (ii) does not make sense.

[1] This revision and Board review would have occurred after July 1, 2011 because the effective date of the 2011 GMA amendments was July 22, 2011.

4. PPF's proposed reading of the GMA would produce an absurd result.

Courts avoid interpreting statutes in ways that lead to absurd results. *Forest Mktg. Enter., Inc. v. Dep't. of Natural Res.*, 125 Wn. App. 126, 104 P.3d 40 (2005). It should be presumed that the legislature did not intend an absurd result. *SEIU Healthcare 775 NW v. Gregoire*, 168 Wn.2d 593, 620, 229 P.3d 774 (2010).

In this case, the Board found that "the position advanced by PPF could potentially produce an absurd result." CP 72. During the hearing before the Board, Presiding Officer Roehl made the following observation:

> Let's assume that a nearby county with similar agricultural activities, similar geography and geology, opts into the VSP, Voluntary Stewardship Program, but that their work isn't approved. Their work plan isn't approved or they don't get funded.
>
> They could then, at a point down the line, adopt Clallam County's regulations and they would be GMA compliant. And yet Clallam County right next door would not be. How do we address that result, which I really feel is an absurd one?

CP 153. PPF's attorney responded: "Well, it is." *Id.* This is an accurate observation. Under the plain meaning of the 2011 amendments to the GMA, a similarly-situated county could comply with the GMA by adopting Clallam County's regulations. RCW 36.70A.735(1)(b). It would be absurd for another county's critical areas regulations to be deemed

GMA compliant, while Clallam County's identical critical areas regulations are not GMA compliant.

Where the plain meaning of the statute would not produce an absurd result, but the alternate reading proposed by PPF would produce an absurd result, the Court should rely on the plain meaning that avoids an absurd result.

C. The Board must apply the current version of the GMA and cannot make public policy.

The Board ensures compliance with the GMA. RCW 36.70A.280(1)(a). "But the jurisdiction of [the Board] is limited. [It] can decide only those petitions that challenge comprehensive plans, development regulations, or permanent amendments to comprehensive plans or development regulations ***for compliance with the GMA***." *Feil v. E. Wash. Growth Mgmt. Hearings Bd.*, 153 Wn. App. 394, 404-05, 220 P.3d 1248 (2009) (citing *Woods v. Kittitas Cnty.*, 162 Wn.2d 597, 609, 174 P.3d 25 (2007)) (emphasis added). The Board does not have the authority to make public policy, even within the limited scope of its jurisdictions. *Viking Props., Inc. v. Holm*, 155 Wn.2d 112, 129, 118 P.3d 322 (2005). The Board must implement the GMA in a "clear, consistent, timely, and impartial manner that recognizes regional diversity." WAC 242-03-020.

Ignoring the plain meaning of the 2011 amendments to the GMA would not result in clear or consistent implementation of the GMA. The question before the Board in this case was whether, given the changes to the GMA in 2011, Clallam County's critical areas regulations now comply with the GMA. To make this determination, the Board was obligated to consider the language of the ***current*** version of the GMA.

PPF relies exclusively on case law and Board decisions ***prior*** to the 2011 GMA amendments to argue that Clallam County's regulations are not GMA compliant. PPF's Opening Brief at 20. The legislature may amend statutes in response to prior Board determinations and case law. *Bixler v. Bowman,* 94 Wn.2d 146, 149-50, 614 P.2d 1290 (1980) (holding that prior case law and the common law doctrine at issue had been abrogated by statute). The legislature did not blindly supersede prior case law and Board decisions. It issued a moratorium on new critical areas regulations in agricultural areas and then directed the Ruckelshaus Center to spend *years* reviewing the issue and recommending a solution. Laws of 2007, ch. 353 (SSB 5248).

PPF makes much of the fact that one of the Board members concurring with the Board's decision expressed concern that the Board was unable to determine whether Clallam County was in compliance in light of the 2011 amendments to the GMA. CP 74. It is true that the Board

never determined the County's compliance ***before*** the 2011 GMA amendments. During its most recent review, however, the Board was tasked with looking at the County's compliance in light of the ***amended*** version of the GMA, and the concurring member conceded that "[o]bviously, the Board cannot ignore the 2011 Legislative action (ESHB 1866) which referenced Clallam County in the Voluntary Stewardship Program." CP 74. Indeed, it would have been inappropriate for the Board to ignore the amended statute's plain language and come to an alternate conclusion based on speculation about legislative intent.

D. The 2011 amendments to the GMA did not create different levels of GMA compliance.

Before the 2011 amendments to the GMA, a county's only option to achieve GMA compliance was to adopt critical areas regulations under RCW 36.70A.060. PPF argues that RCW 36.70A.060's critical areas provisions are "more protective" than the Voluntary Stewardship Program, essentially suggesting that there are now different levels of GMA compliance. PPF Opening Brief at 34. The Voluntary Stewardship Program created an alternate route to GMA compliance—it did not create a new level of compliance. RCW 36.70A.710(1). ***Both*** RCW 36.70A.060 ***and*** the Voluntary Stewardship Program provide a way for counties to comply with the GMA.

GMA compliance is all that is required. There are not different "levels" of GMA compliance. A county that fails to successfully complete the Voluntary Stewardship Program is not held to a lower standard. Rather, that county is "bumped" out of the Voluntary Stewardship Program and back into compliance under RCW 36.70A.060, through adoption of the critical areas regulations of one of the safe harbor counties, including Clallam County. Compliance with ***either*** option results in GMA compliance. And GMA compliance under the current version of the GMA was the Board's only concern in this case.

E. RCW 36.70A.710 only requires a county to revise its regulations by July 2013 "if necessary."

PPF argues that no county could adopt Clallam County's regulations before the County revises its regulations as required by RCW 36.70A.710. PPF Opening Brief at 15. But that statute only requires a county that has not elected to participate in the Voluntary Stewardship Program "to review and, ***if necessary***, revise development regulations adopted under this chapter to protect critical areas as they specifically apply to agricultural activities" within two years after July 22, 2011. RCW 36.70A.710 (emphasis added). This section requires Clallam County to revise its regulations only if it determines that such revision is ***necessary***. Clallam County has the discretion to revise its regulations or

not. Given the change to the GMA in 2011, Clallam County did not find it necessary to revise its regulations to respond to an order of invalidity that predated the 2011 amendments. Thus, it did not revise its critical areas regulations before July 22, 2013.

This outcome was allowed under the GMA. PPF says the legislature "clearly hoped" Clallam County would revise its regulations. PPF Opening Brief at 35. It is illogical to assume that the legislature selected Clallam County as a safe harbor county with the "hope" that the County would exercise its discretion and deem it necessary to revise its critical areas regulations before July 22, 2013.

F. PPF's timing arguments fail to recognize that a county could fail to successfully complete the Voluntary Stewardship Program at any point.

PPF cannot substantiate its assertion that counties must wait until July 2015 before they can take advantage of the safe harbor route and adopt Clallam County's critical areas regulations. PPF's convoluted timing arguments fail because the timelines in the Voluntary Stewardship Program set outer limits, and events could occur before these deadlines. Counties in the Voluntary Stewardship Program may adopt Clallam County regulations if any one of four events occurs. Those are set forth in RCW 36.70A.735(2).

For one of those four events—an inadequate funding determination—the statute does set an outer limit of July 2015, RCW 36.70A.740, but this funding determination could also occur earlier. The statute just requires the State Conservation Commission to make a determination *by* July 31, 2015. *Id.* In fact, it could become clear that funding is not and will not be available for a participating watershed before 2015 (i.e. because of the unique demands of a particular county's program, or the total funds available, or an unanticipated financial event).

Nothing in the GMA required Clallam County to revise its regulations before their adoption by a similarly-situated county.

G. PPF is not entitled to attorneys' fees.

PPF requests statutory attorneys' fees. It is not clear which statute PPF relies upon for this request, but there is no basis to award PPF attorneys' fees in this case.

V. CONCLUSION

The legislature has decided that a county with agricultural activities, geography, and geology similar to Clallam County's can satisfy the GMA's requirement to protect critical areas from the impacts of agricultural activities by adopting Clallam County's regulations. The only logical conclusion is that the legislature has found that Clallam County's regulations comply with the GMA.

The Board acted according to the law and within its scope of authority when it granted Clallam County's motion to dismiss and rescinded its previously-entered order of invalidity. The plain meaning of the 2011 GMA amendments do not support an alternate outcome. The Court should affirm the decision reached by the Board and the superior court.

RESPECTFULLY SUBMITTED this 9TH day of April, 2014.

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CERTIFICATE OF SERVICE

On the date indicated below, I hereby certify that I caused to be served upon all counsel of record, via email and U.S. First Class Mail, a true and correct copy of the foregoing document.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 9th day of April, 2014, at Seattle, Washington.

Vicki Hadley
Vicki J. Hadley

ND: 15489.01002 4839-1435-3946v1